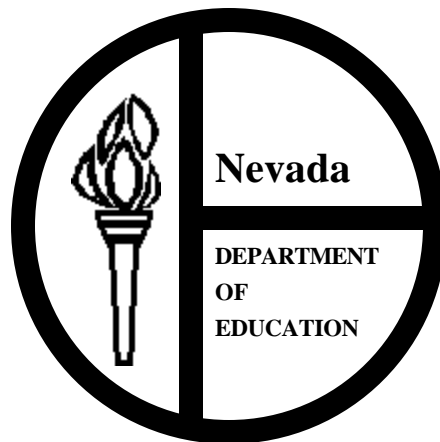


**TECHNICAL ASSISTANCE GUIDELINES AND
SCHOOL DISTRICT REPORTING REQUIREMENTS
FOR NRS §388.521–5315
AVERSIVES PROHIBITION**

Created in response to the 1999 passage of Nevada Assembly Bill 280



Revised
August, 2001

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Technical Assistance Guidelines For School District Reporting Requirements For Nevada Revised Statutes (NRS) §388.521-5315

This document is intended to assist districts in meeting procedural requirements for compliance with NRS §388.521 – 5315.

Aversive Interventions

The use of aversive interventions as enumerated in NRS §388.5215 (1-10) on a special education student, is prohibited, and constitutes a per se violation of NRS §388.521-5315. These aversive interventions include the use of:

- Noxious odors and tastes
- Water and other mists or sprays
- Blasts of air
- Corporal punishment
- Verbal and mental abuse
- Electric shock
- Chemical restraint
- Placement of a person alone in a room, where the door is held shut and the student is prevented from leaving the room
- Forced exercises prohibited (a) because student's behavior is related to his/her disability, or (b) due to harmful affect on student's health, or (c) because student's disability prevents participation in activity
- Deprivation of necessities including (a) food or liquid at a time when it is customarily served; or (b) medication.

Physical and/or Mechanical Restraints

Use of physical and/or mechanical restraints on a special education student is generally prohibited. However, there are specific circumstances in which such restraints are "permissible," depending on the type of restraint used and the conditions surrounding that use. NRS §388.521-5315 identifies those conditions in which restraints are permitted:

- 1. Permissible use of restraints**, as defined in sections NRS §388.5275 (2)(a-c) and NRS §388.528 (2)(a-d), does not constitute a violation of NRS §388.521-5315. Additionally, emergency use of physical and/or mechanical restraint(s) is allowed, as long as all required criteria are met under NRS §388.5275 (1)(a-c) and NRS §388.528 (1)(a-i).

(a) Required criteria for permissible use of a physical restraint:

- the restraint was used to assist a student to complete task or response, and either the student did not resist the application of physical restraint, or the student's resistance was minimal in intensity and duration
- or*
- the restraint was used to escort or carry a student to safety due to danger in present location
- or*
- the restraint was used to conduct necessary medical examinations or treatments on a student

(b) Required criteria for permissible use of a mechanical restraint:

- the restraint was used to treat the medical needs of a student
or
- the restraint was used to protect a student who is known to be at risk of injury to self due to lack of coordination or frequent loss of consciousness
or
- the restraint was used to provide proper body alignment to a student
or
- the restraint was used to position a student who has physical disabilities in a manner prescribed in the student's individualized educational program (IEP)

(c) Required criteria for use of a physical restraint in an emergency situation:

- the restraint must have been used because an emergency existed that necessitated use of physical restraint due to immediate threat of physical injury to self, others and/or to protect against immediate threat of severe property damage
and
- the restraint must have been used only for the period that was necessary to contain the behavior of the student so that the student was no longer an immediate threat of causing physical injury to self, others and/or causing severe property damage
and

- ? the restraint must have been used in a way such that the use of force in the application of physical restraint did not exceed the force that was reasonable and necessary under the circumstances precipitating the use of physical restraint

(d) Required criteria for use of a mechanical restraint in an emergency situation:

- the restraint must have been used only due to immediate threat of physical injury to self, others and/or to protect against immediate threat of severe property damage
and
- a medical order authorizing the use of mechanical restraint was obtained from the student's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint
and
- the physician who signed the order or the attending physician examined the student as soon as practicable
and
- the mechanical restraint was applied by a member of the staff of the school who is trained and qualified to apply mechanical restraint
and
- the student was given the opportunity to move and exercise restrained body parts at least 10 minutes for every 60 minutes of restraint unless otherwise prescribed by the physician who signed the order

and

- a member of the staff of the school lessened or discontinued the restraint every 15 minutes to determine if the student would stop or control inappropriate behavior without the use of restraint

and

- the record of the student contains a notation that includes the time of day that the restraint was lessened or discontinued, the response of the student and the response of the member of the staff of the school who applied the mechanical restraint

and

- a member of the staff of the school continuously monitored the student during the time that mechanical restraint was used on the student

and

- the mechanical restraint was used only for the period that was necessary to contain the behavior of the student so that the student was no longer an immediate threat of causing physical injury to self or others or causing severe property damage
-

2. Non-permissible use of restraints is any other use of physical and/or mechanical restraint which do not meet the criteria of the four categories, (1) (a-d) described above, and does constitute a violation of NRS §388.521-5315.

District Requirements for Notice

Timeline

Within one working day of the use of a physical or mechanical restraint in an emergency situation, the use must be reported to the student's cumulative record and confidential file. A report must also be sent to the student's Individualized Educational Program (IEP) Team, the student's parent or guardian and the Board of Trustees of the school district.

If the Board of Trustees determines that the emergency use was a "denial of rights," this determination must also be reported to the student's confidential file and cumulative record and the Department pursuant to NRS §388.5315. **Note:** The Open Meeting Law applies to Board of Trustees' meetings. Additionally, notice of the meeting must be provided 21 days before the meeting date.

Within 24 hours of the occurrence of a violation, or as soon thereafter as the violation is discovered, the use of an aversive intervention or a non-permissible physical and/or mechanical restraint must be reported to the Board of Trustees of the school district.

The non-emergency use of a permissible restraint pursuant to NRS §388.527(2)(a-c) and §388.528(2)(a-d) need not be reported.

Content

Although law does not prescribe the type or amount of information to be provided in the notice, the Board of Trustees must receive enough information to assist them in meeting their legal responsibilities. Model forms have been developed by the Nevada Department of Education as a guideline to help ensure that sufficient information is reported to the Board of Trustees. (See attached forms A, B and C.) It is recommended that districts utilize written notice for purposes of documenting compliance with the provisions of NRS §388.521-5315.

Procedural Complaints

If a district fails to report the use of an aversive intervention or a restraint as required under the law, and a parent or guardian files a complaint against that district, the Department will (a) refer that individual back to the district to exhaust procedural safeguards prior to Department intervention. If the Department is satisfied that procedural safeguards have been exhausted, the Department may (a) conduct a procedural review to determine if the district has complied with the requirements of NRS §388.521-5315, (b) assist the district to conduct an investigation, and/or (c) conduct its own investigation upon a determination that the district has had an opportunity and failed to carry out the procedures under NRS §388.521-5315.

District Requirements for Corrective Plan

Timeline

If the Board of Trustees of a school district determines that a violation of NRS §388.521-5315 has occurred, a Corrective Plan must be developed by the Board, in cooperation with the Superintendent of the school district. This Corrective Plan must ensure that, within 30 calendar days of the occurrence of the violation, appropriate actions are taken by the school and the Board to address the violation and to prevent future occurrences of such violations. This Corrective Plan must be submitted to the Nevada Department of Education, which shall review the Plan to ensure compliance with applicable federal and state requirements. If necessary, the Department may require revision(s) to the Plan. When determined necessary by the Department, requests for revisions or additional information will be made of districts within 45 days of the Department's receipt of the Corrective Plan.

Content

The district should provide an accounting of the occurrence and corrective actions taken in order for the Department to determine if state and federal requirements have been met. At a minimum, the Corrective Plan and procedural documentation should include:

1. the identification of the specific aversive intervention(s) or non-permissible physical and/or mechanical restraint(s) used and the date and time of the occurrence;
2. what investigative actions were taken;
3. the reason(s) why the action was determined to be a violation;
4. the date and time that notice was provided to the Board of Trustees;
5. a copy of the Corrective Plan and the date the plan was developed by the Board of Trustees in cooperation with the school district superintendent; and
6. what corrective actions were taken and the date each action was completed.

NRS §388.5295(3) states that the Department may require revision to the plan to ensure compliance and §388.5295(4) states that "if the school where a violation occurred does not meet the requirements of the plan to the satisfaction of the Department, the Department may appoint a licensed administrator to oversee the school to ensure that the school meets the requirements of the plan. An administrator serves at the pleasure of the superintendent of public instruction and is entitled to receive such compensation as may be set by the superintendent. A school district that contains a school for which an administrator is appointed

pursuant to this subsection shall reimburse the Department for any expenses incurred by the Department pursuant to this subsection."

NRS §388.521-388.5315: Nevada Department of Education Technical Form A

Person Completing Form: _____ Position: _____

-
- This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on its right side, suggesting it's resting on a surface.

- The date and time of notice to the Board of Trustees: _____

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Notice of Use of Aversive Intervention

NRS §388.521-388.5315: Nevada Department of Education Technical Form B

**** Must be submitted within 24 hours of occurrence of violation,
or as soon thereafter as the violation is discovered.****

Student Name: _____

Grade: _____ Date of Birth: _____

School: _____ Date/Time: _____

Person Completing Form: _____ Position: _____

1. Was the intervention used to punish a student with a disability? ☐ yes ☐ no
2. Was the intervention used to eliminate, reduce or discourage maladaptive behavior? ☐ yes ☐ no
3. Identify the intervention(s) used:

⊖ **Noxious Odors and Tastes** — identify: _____

⊖ **Water and Other Mists or Sprays** — identify: _____

⊖ **Blasts of Air** — identify: _____

⊖ **Corporal Punishment** — identify: _____

"Corporal punishment" means the intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.

⊖ **Verbal and Mental Abuse** — identify: _____

"Verbal and mental abuse" means actions or utterances that are intended to cause and actually cause severe emotional distress to a person.

⊖ **Electric Shock** — identify: _____

"Electric shock" means the application of electric current to a person's skin or body. The term does not include electroconvulsive therapy.

⊖ **Chemical Restraint** — identify: _____

"Chemical restraint" means the administration of drugs for the specific and exclusive purpose of controlling an acute or episodic aggressive behavior when alternative intervention techniques have failed to limit or control the behavior. The term does not include the administration of drugs on a regular basis, as prescribed by a physician, to treat the symptoms of mental, physical, emotional or behavioral disorders and for assisting a person in gaining self-control over his impulses.

θ **Placement of a person alone in a room...**

The placement of a person alone in a room where release from the room is prohibited by a mechanism, including, without limitation, a lock, device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.

Student prevented from leaving room by:

- ☐ door held shut by lock identify: _____
or
- ☐ door held shut by device identify: _____
or
- ☐ door held shut by object positioned to hold door closed
identify: _____
or
- ☐ other methods used to prevent student from leaving room:
identify: _____

θ **Forced Exercise**

Requiring a person to perform exercise under forced conditions if the: (a) Person is required to perform the exercise because he exhibited a behavior that is related to his disability; (b) Exercise is harmful to the health of the person because of his disability; or (c) Nature of the person's disability prevents him from engaging in the exercise.

Intervention is prohibited because:

- ☐ student was required to exercise because the student exhibited a behavior related to his/her disability
or
- ☐ the student was required to exercise even though the exercise was harmful to the student's health
or
- ☐ the student was required to exercise even though the student's disability prevents participation in the exercise

θ **Deprivation of necessities...**

The deprivation of necessities needed to sustain the health of a person, regardless of the length of the deprivation, including, without limitation, the denial or unreasonable delay in the provision of: (a) Food or liquid at a time when it is customarily served; or (b) Medication.

Denial or unreasonable delay of:

- ☐ food or liquid at time when it's customarily served
or
- ☐ medication identify: _____
or
- ☐ other: _____

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

the date and time that notice was provided to the Board: _____

Notice of Use of Physical and/or Mechanical Restraint

NRS §388.521-388.5315: Nevada Department of Education Technical Assistance Form C

Must be submitted within 24 hours of the use of non-permissible restraint usage,
or as soon thereafter as the usage is discovered or one working day of the emergency
use of the restraint, or as soon thereafter as the usage is discovered.

Student Name: _____

Grade: _____ Date of Birth: _____

School: _____ Date/Time: _____

Person Completing Form: _____ Position: _____

Identify the restraint(s) used:

- ⊖ **Physical Restraint** — *"Physical restraint" means the use of physical contact to limit a person's movement or hold a person immobile.*

Identify restraint: _____

- ⊖ **Mechanical Restraint**— *"Mechanical restraint" means the use of devices, including, without limitation, mittens, straps and restraint chairs to limit a person's movement or hold a person immobile.*

Identify restraint: _____

Complete the following three questions in order to determine which other sections of this report must be addressed:

1. This reports addresses emergency use of physical restraint(s): ☐ no ☐ yes — complete sections A & C
2. This reports addresses emergency use of mechanical restraint(s): ☐ no ☐ yes — complete sections B & C
3. This reports addresses non-permissible use of physical and/or mechanical restraint(s): ☐ no ☐ yes — complete section C

SECTION A: Emergency use of physical restraint(s)

The restraint was used:

☐ in an emergency situation:

- ☐ an emergency existed that necessitated use of physical restraint due to immediate threat of harm to: ☐ self ☐ others ☐ property
and
- ☐ the physical restraint was used only for the period that was necessary to contain the behavior of the student so that the student was no longer an immediate threat of causing physical injury to self or others or causing severe property damage
and
- ☐ the use of force in the application of physical restraint did not exceed the force that was reasonable and necessary under the circumstances precipitating the use of physical restraint

SECTION B: Emergency use of mechanical restraint(s)

The restraint was used:

☐ in an emergency situation:

- ☐ an emergency existed that necessitated use of mechanical restraint due to immediate threat of harm to: ☐ self ☐ others ☐ property
and
- ☐ a medical order authorizing the use of mechanical restraint was obtained from the student's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint (attach medical order)

and

- ☐ the physician who signed the order or the attending physician examined the student as soon as practicable

physician: _____

student examined within _____ minutes of application of restraint

and

- ☐ the mechanical restraint was applied by a member of the staff of the school who is trained and qualified to apply mechanical restraint

identify staff member(s): _____

individual(s) is trained/qualified to apply restraint: o yes o no

and

- ☐ the student was given the opportunity to move and exercise restrained body parts at least 10 minutes for every 60 minutes of restraint unless otherwise prescribed by the physician who signed the order (attach additional medical order(s) if appropriate)

duration of restraint: _____

number of opportunities to move body parts: _____

and

- ☐ a member of the staff of the school lessened or discontinued the restraint every 15 minutes to determine if the student would stop or control inappropriate behavior without the use of restraint

identify staff member(s): _____

and

- ☐ the record of the student contains a notation that includes the time of day that the restraint was lessened or discontinued, the response of the student and the response of the member of the staff of the school who applied the mechanical restraint (attach copy of notation)

and

- ☐ a member of the staff of the school continuously monitored the student during the time that mechanical restraint was used on the student

identify staff member(s): _____

and

- ☐ the mechanical restraint was used only for the period that was necessary to contain the behavior of the student so that the student was no longer an immediate threat of causing physical injury to self or others or causing severe property damage

duration of restraint: _____

SECTION C (must be completed for every report)

Provide a detailed account of the incident. Attach additional sheets as necessary.

Please indicate the time and date of the notice to Board:_____

If the emergency use of the restraint is determined by the Board of Trustees to be a **denial of rights**:

time and date of the determination:

Sample Letter of Corrective Action

Date

Jack W. McLaughlin
Superintendent of Public Instruction
Nevada Department of Education
700 E. Fifth Street
Carson City, NV 89701

RE: Corrective Action Plan

Dear Dr. McLaughlin:

Pursuant to NRS §388.521-5315, the following information is being provided to the Nevada Department of Education.

On (date), at (time), a/an (specify aversive/restraint) occurred at (name of school). (Include a brief description.)

On (date), at (time), notice of the incident was provided to the Board of Trustees, (others).

The following investigation actions were taken:

On (date), at (time), the Board of Trustees determined the action to be a violation of NRS §388.521-5315.

The attached Corrective Plan was developed on (date).

The following corrective actions were completed on the following dates: (Identify specific corrective actions with completion dates.)

(If any additional pertinent information and/or explanations are necessary, please include them.)

Sincerely,

Superintendent/Assignee